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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

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TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture amended Section 3591.19, subsection (a), of the regulations in Title 3 of the California Code of Regulations pertaining to *Diaprepes abbreviatus* Eradication Area as an emergency action that was effective on May 11, 2006. The Department proposes to continue the regulation as adopted and to complete the amendment process by submission of a Certificate of Compliance no later than September 8, 2006.

A public hearing is not scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the Department of Food and Agriculture, at its own motion, or at the instance of any interested person, may adopt the proposal substantially as set forth without further notice.

Notice is also given that any person interested may present statements or arguments in writing relevant to the action proposed to the agency officer named below on or before July 31, 2006.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (FAC Section 5321).

Existing law also provides that the Secretary may establish, maintain, and enforce quarantine, eradication, and other such regulations as he deems necessary to protect the agricultural industry from the introduction and spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). Existing law also provides that eradication regulations may proclaim any portion of the State as an eradication area and set forth

the boundaries, the pest, its hosts, and the methods to be used to eradicate said pest (Food and Agricultural Code Section 5761).

Section 3591.19, subsection (a), was amended and established San Diego County as an eradication area for *Diaprepes abbreviatus*. The effect of this action was to establish authority for the State to conduct eradication activities in San Diego County. There is no existing, comparable federal regulation or statute.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department of Food and Agriculture has determined that Section 3591.19 does not impose a mandate on local agencies or school districts and no reimbursement is required for Section 3591.19 under Section 17561 of the Government Code. The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

The Department has made an initial determination that the proposed actions will not affect housing costs.

EFFECT ON BUSINESSES

The Department has made an initial determination that the proposed actions will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON AFFECTED PRIVATE PERSON OR BUSINESSES

The agency is not aware of any cost impacts that a representative business or private person would necessarily incur in reasonable compliance with the proposed actions.

ASSESSMENT

The Department has made an assessment that the proposed adoption and amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses

within California, or (3) affect the expansion of businesses currently doing business within California.

ALTERNATIVES CONSIDERED

The Department of Food and Agriculture must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions.

AUTHORITY

The Department proposes to amend Section 3591.19, subsection (a), pursuant to the authority vested by Sections 407 and 5322 of the Food and Agricultural Code.

REFERENCE

The Department proposes to amend Section 3591.19, subsection (a), to implement, interpret and make specific Sections 407, 5322, 5761, 5762 and 5763 of the Food and Agricultural Code.

EFFECT ON SMALL BUSINESS

The proposed amendment of this regulation may affect small businesses.

CONTACT

The agency officer to whom written comments and inquiries about the initial statement of reasons, proposed actions, location of the rulemaking files, and request for a public hearing may be directed to is: Stephen S. Brown, Department of Food and Agriculture, Plant Health and Pest Prevention Services, 1220 N Street, Room A-316, Sacramento, California 95814, (916) 654-1017, FAX (916) 654-1018, E-mail: sbrown@cdfa.ca.gov. In his absence, you may contact Liz Johnson at (916) 654-1017. Questions regarding the substance of the proposed regulation should be directed to Stephen S. Brown.

INTERNET ACCESS

The Department has posted the information regarding this proposed regulatory action on its Internet website (www.cdfa.ca.gov/cdfa.pendingregs).

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department of Food and Agriculture has prepared an initial statement of reasons for the proposed actions, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. A copy of the initial statement of reasons and the proposed regulations in underline and strikeout form may be obtained upon request. The location of the information on which the proposal is based may also be obtained upon request. In addition, when completed, the final statement of reasons will be available upon request. Requests should be directed to the contact named herein.

If the regulations amended by the Department differ from, but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of amendment. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency officer (contact) named herein.

TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE

NOTICE IS HEREBY GIVEN that the Department of Food and Agriculture (herein after referred to as "Department") is proposing to take the action described in the Informative Digest.

A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than **15 days prior to the close of the written comment period**. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **on or before 5:00 p.m., July 31, 2006**.

Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407, 18693, 18735, 18960, and

18961 of the Food and Agricultural Code, and to implement, interpret or make specific Chapter 4 (commencing with section 18650), Chapter 4.1 (commencing with section 18940), and Chapter 6 (commencing with section 19501), of Part 3, Division 9, and Chapter 3 (commencing with section 24951) of Part 1, Division 12, of said Code, the Department is considering adding new Articles 1 through 14 to Subchapter 1, Chapter 4, Division 2, of Title 3 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

MEAT AND POULTRY INSPECTION

Existing law, Food and Agricultural Code Chapter 4 (commencing with section 18650), 4.1 (commencing with section 18940), Chapter 5 (commencing with section 19200), Chapter 6 (commencing with section 19501) of Part 3, Division 9, and Chapter 2 (commencing with section 24651) and Chapter 3 (commencing with section 24951) of Part 1, Division 12, 5 of Part 1, Division 12, authorize the Department of Food and Agriculture's (Department) Meat and Poultry Inspection Branch to license and inspect custom livestock slaughterhouses, pet food slaughterers, and meat processing establishments, that are exempt from federal inspection. The Branch also trains and licenses industry personnel to become licensed Livestock Meat Inspectors and Processing Inspectors to perform meat inspection activities. Such meat processing establishments and inspection activities pertain to facilities that are exempt from inspection by the United States Department of Agriculture (USDA), but require inspection in California.

To implement the above-referenced statutes, the Department has in place existing regulations under Articles 1, 2 and 3 of Subchapter 1, Chapter 4, Division 2 of Title 3 of the California Code of Regulations. The regulations specify the requirements for inspecting meat and poultry in California, the examination and licensure requirements for Livestock Meat Inspectors and Processing Inspectors, and the requirements for persons operating a slaughter and/or meat processing establishment. The regulations also include references to the Code of Federal Regulations (CFR) relating to meat and poultry inspection.

This proposal reorganizes the existing regulations for meat and poultry inspection and adopts substantive updated requirements under new Articles 1 through 14 of Subchapter 1 of Chapter 4, Division 2, of Title 3 of the California Code of Regulations.

COMPARABLE FEDERAL REGULATIONS

The Department is adopting, or incorporating by reference, specified sections of the following federal rules, requirements, and policies with such changes as specified in this proposal to make them applicable to state operations and transactions for meat and poultry inspection pursuant to sections 18735 and 18961 of the Food and Agricultural Code:

- 7 USC Ch. 48 (1–7–03) Humane Methods of Livestock Slaughter
- 21 UCS Ch. 9 (1–2–01) Federal Food, Drug, and Cosmetic Act
- 9 CFR Ch. III (2005) Part 301 Terminology; Adulteration and Misbranding Standards
- 9 CFR Ch. III (2005) Part 302 Application of Inspection and Other Requirements
- 9 CFR Ch. III (2005) Part 303 Exemptions
- 9 CFR Ch. III (2005) Part 307 Facilities for Inspection
- 9 CFR Ch. III (2005) Part 309 Ante-Mortem Inspection
- 9 CFR Ch. III (2005) Part 310 Post-Mortem Inspection
- 9 CFR Ch. III (2005) Part 311 Disposal of Diseased or Otherwise Adulterated Carcasses and Parts
- 9 CFR Ch. III (2005) Part 312 Official Marks, Devices and Certificates
- 9 CFR Ch. III (2005) Part 313 Humane Slaughter of Livestock
- 9 CFR Ch. III (2005) Part 314 Handling and Disposal of Condemned or other Inedible Products at Official Establishments
- 9 CFR Ch. III (2005) Part 316 Marking Products and Their Containers
- 9 CFR Ch. III (2005) Part 317 Labeling, Marking Devices, and Containers
- 9 CFR Ch. III (2005) Part 318 Entry into Official Establishments; Reinspection and Preparation of Products
- 9 CFR Ch. III (2005) Part 319 Definitions and Standards of Identity or Composition
- 9 CFR Ch. III (2005) Part 381 Poultry Inspection, Subpart C, Exemptions
- 9 CFR Ch. III (2005) Part 381 Poultry Inspection, Subpart P, Definitions and Standards of Identity or Composition
- 9 CFR Ch. III (2005) Part 416 Sanitation
- 9 CFR Ch. III (2005) Part 424 Preparation and Processing Operations
- 21 CFR Ch. I (2004) Part 170 Food Additives, Subparts A and B

- USDA/FSIS Directive 7120.1 (11-3-03, 8-4-04 and 4-7-05) Safe and Suitable Ingredients Used in the Production of Meat and Poultry Products
- USDA/FSIS Directive 7220.1, Revision 3, March 2, 1985 Food Labeling Division Policy Memoranda
- USDA/FSIS, Office of Policy Program Development Food Standards and Labeling Policy Book, May 2003

FISCAL IMPACT STATEMENTS

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Department has made an initial determination that this proposed regulatory action will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states. This proposal pertains to custom livestock slaughterhouses, pet food slaughterers, and meat processing establishments, that are exempt from federal inspection. It also pertains to licensed Livestock Meat Inspectors and Processing Inspectors performing meat inspection activities. This proposal imposes the following paperwork, reporting and record keeping requirements upon businesses:

Paperwork, Reporting and Record Keeping: (a detailed list is included in the rulemaking file, along with form numbers, and is available to the public by contacting the persons named in this Notice):

Completion of application forms for businesses applying for a Custom Livestock Slaughterhouse license or a Meat Processing Plant license;

Completion of an application for a permit to obtain specimens from official meat processing establishments;

Completion of reports and records for plant inspection: Schedule of operations; general facility notes; daily and monthly processing report; monthly report for processing operations at state inspected meat and poultry establishments; daily livestock slaughter report; monthly summary of livestock slaughtered and inspected; label formulation and approval form; In-depth review of cooked sausage; In-depth review of

cured/cooked and smoked meats; smokehouse chart; plants freezing pork to destroy trichina; plant certified pork use record. Custom Livestock Slaughterhouse plan guidelines and Custom Livestock Slaughterhouse construction and equipment guidelines; Meat Processing Establishment plan guidelines, and Meat Processing Establishment construction and equipment guidelines.

In making these determinations, the Department has not considered alternatives that would lessen any adverse economic impact on businesses and invites the public to submit such proposals during the written comment period. Submissions may include the following considerations:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- The consolidation or simplification of compliance and reporting requirements for businesses.
- The use of performance standards rather than prescriptive standards.
- Exemption or partial exemption from the regulatory requirements for businesses.

Impact on Jobs/New Businesses: The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

Cost Impacts on Private Persons or Entities: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This proposal pertains to custom livestock slaughterhouses, pet food slaughterers, and meat processing establishments, that are exempt from federal inspection. It also pertains to licensed Livestock Meat Inspectors and Processing Inspectors performing meat inspection activities. This proposal imposes the following paperwork and record keeping requirements upon persons: Processing Inspector License Application, Livestock Meat Inspector License Application, Livestock Slaughter Inspection Handbook, and Processing Inspector Handbook.

Effect on Housing Costs: None

Finding of Necessity for Report: The Department finds that it is necessary for the health, safety, and general welfare of the people of the state that this regulation requiring a report apply to businesses.

EFFECT ON SMALL BUSINESS

The Department has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing (if a hearing is requested from the public), or during the public comment period.

INITIAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing (if a hearing is requested) or during the public comment period upon request from the Department of Food and Agriculture, 1220 N Street, Room A-116, Sacramento, California 95814.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations are to be addressed to the following:

Name: Douglas Hepper, DVM
Address: Department of Food and Agriculture
Meat and Poultry Inspection Branch
1220 N Street, Room A-125
Sacramento, CA 95814
Telephone No.: (916) 657-5295
Fax No.: (916) 654-2608
E-mail address: DHepper@cdfa.ca.gov

Inquiries concerning the rulemaking process are to be addressed to the following:

Name: Nancy Grillo, Associate Analyst
Address: Department of Food and Agriculture
1220 N Street, Room A-116
Sacramento, CA 95814
Telephone No.: (916) 651-7280
Fax No.: (916) 653-4249
E-mail address: NGrillo@cdfa.ca.gov

Written comments, facsimiles or e-mails regarding this proposal are to be addressed to the following:

Name: Douglas Hepper, DVM
Address: Department of Food and Agriculture
Meat and Poultry Inspection Branch
1220 N Street, Room A-125
Sacramento, CA 95814
Telephone No.: (916) 657-5295
Fax No.: (916) 654-2608
E-mail address: DHepper@cdfa.ca.gov

Website Access:

Materials regarding this proposal can be found at <http://www.cdfa.ca.gov>

TITLE 10. DEPARTMENT OF INSURANCE

**45 Fremont Street, 21st Floor
San Francisco, California 94105**

NOTICE OF PROPOSED ACTION AND NOTICE OF PUBLIC HEARING

May 30, 2006

RH03030726

SUBJECT OF HEARING

California Insurance Commissioner John Garamendi proposes to adopt the regulations described below after considering comments from the public. The Commis-

sioner's regulations propose to amend Title 10, Chapter 5, Subchapter 3, Article 7.4 of the California Code of Regulations. The proposed regulations will interpret the provisions of Division 2, Part 1, Chapter 8.5 of the California Insurance Code (CIC), entitled "Earthquake Insurance."

AUTHORITY AND REFERENCE

The Commissioner proposes to adopt the proposed regulations under the authority of *CalFarm v. Deukmejian* (1989) 48 Cal.3d 805, 825 [258 Cal.Rptr. 161] and *20th Century v. Garamendi* (1994) 8 Cal. 4th 216, 280 [32 Cal.Rptr.2d 807], which recognize the Commissioner's implied authority to exercise those powers that may fairly be implied from the statute granting the powers.

An insurer is required to offer earthquake coverage to those policyholders who are issued a policy of residential property insurance. (CIC § 10081.) CIC section 10086.5 prohibits a rejection, cancellation or nonrenewal of a residential insurance policy for reasons related to a policyholder's acceptance of an offer of earthquake coverage. These regulations will prohibit the use of eligibility guidelines in earthquake or residential property insurance that negatively impact policyholders who wish to accept an offer of earthquake coverage. The proposed regulations will implement, interpret and make specific CIC sections 675, 676, 678, 1857, 1858, 1858.1, 1858.07, 1860.3, 1861.05, 10081, 10082, 10082.5, 10086.5, 10087, 10089.2, 12921 and 12926.

PUBLIC HEARING

The Commissioner will hold a public hearing to provide all interested persons an opportunity to present statements or arguments, either orally or in writing, with respect to this regulation, as follows:

Date and time: August 9, 2006 10:00 a.m.

Location: Department of Insurance Hearing Room
45 Fremont Street, 22nd Floor
San Francisco, CA 94105

The hearing will continue on the date noted above until all testimony has been submitted or 4:00 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral and/or written comments at the scheduled hearing. Written comments

not presented at the hearing must be addressed to the following contact person:

Mike Riordan, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
riordanm@insurance.ca.gov
Telephone: (415) 538-4226
Facsimile: (415) 904-5490

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If the contact person is unavailable, inquiries may be sent to the backup contact person:

Lisbeth Landsman-Smith, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
300 Capitol Mall, 16th Floor
Sacramento, California 95814
landsmanl@insurance.ca.gov
Telephone: (916) 492-3561
Facsimile: (916) 324-1883

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Commissioner, c/o the contact person at the address listed above, by no later than **5:00 p.m. on August 9, 2006**. Any materials received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: riordanm@insurance.ca.gov or landsmanl@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of the contact person listed above. All comments sent by facsimile must be directed to the attention of Mike Riordan using the following fax number: (415) 904-5490. Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth above. Written comments shall be submitted by one method only.

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons

with sight or hearing impairments are requested to notify the contact person (listed above) for this hearing in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10, of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

The proposed regulations will ensure that residential property insurance and earthquake insurance is fair, available and affordable for all Californians, including those Californians with residential property that poses a unique risk of loss due to earthquake. A brief description of the history of the mandatory earthquake offer statutes provides the context for, as well as the need for, the proposed regulations.

As set forth in the court's decision in the case of *Marina Green Homeowners Association v. State Farm Fire and Casualty Company*, Chapter 8.5 of the CIC, entitled "Earthquake Insurance," was enacted by the Legislature primarily as a result of insurance companies' concerns about the doctrine of concurrent causation as it related to earthquakes. Specifically, the insurance industry was concerned about an increasing body of case law which suggested that the doctrine of concurrent causation made insurers liable for earthquake loss under an "all risk" insurance policy, even if those insurers listed earthquake loss as an excluded peril under the applicable policy. (*Marina Green Homeowners Assoc. v. State Farm Fire and Cas. Co.* (1994) 25 Cal.App.4th 200, 205

[30 Cal.Rptr.2d 364].) Chapter 8.5 was regarded as a compromise that would abrogate the doctrine of concurrent causation as it applies to earthquakes, thereby avoiding insurer insolvency in the event of a major catastrophe, while still making earthquake insurance available to all interested persons. (*Ibid.*)

Thus, in order to prevent the application of the concurrent causation doctrine to policies which expressly exclude earthquake losses, CIC section 10088 provided that "...no policy which by its terms does not cover the peril of earthquake ... shall be held to provide coverage for any loss or damage when earthquake is a proximate cause..."¹

Because CIC section 10088 largely shielded the "all risk" homeowners policy from claims for losses caused by earthquake, the Legislature recognized a need to ensure that homeowners could still obtain earthquake coverage. Thus, the Legislature identified a second purpose in drafting Chapter 8.5: to promote awareness of earthquake insurance by residential property owners and tenants by requiring insurers to offer that coverage. (Scats. 1984, ch. 916, § 2, p. 3073; see also *Williams v. State Farm Fire and Casualty Co.* (1990) 216 Cal.App. 3d 1540, 1544-45 [265 Cal.Rptr. 644].) The Legislature made it clear that no policy of residential property insurance could be issued in this state unless the insured were offered coverage for loss caused by the peril of earthquake. (CIC § 10081.) The Legislature's mandatory earthquake offer statutes were established in 1984. In the years following 1984, the Legislature modified the mandatory earthquake offer statutes in an effort to preserve the availability of earthquake insurance for Californians.

Prior to the 1988 adoption of CIC section 10086.5, some insurers declined to insure earthquake risks that were deemed "extraordinary" by failing to issue residential property insurance policies to those homes that represented a substantial risk of earthquake.

Rejection and Cancellation of Policyholders That Accepted Offer of Earthquake

Up until the Legislature's adoption of CIC section 10086.5 in 1988, the earthquake insurance law contemplated the rejection or cancellation of a policy of residential insurance by the insurer, but imposed no limitations on the insurer's right to cancel or reject a policy. (*Williams v. State Farm Fire and Casualty Co.* (1990) 216 Cal.App.3d 1540, 1548 [265 Cal.Rptr. 644].) In 1988, the Legislature noted that many companies pro-

¹The Legislature, under limited circumstances, provided that some perils causally linked to an earthquake would still be covered by the homeowners policy. CIC section 10088.5, for example, still requires every residential policy covering fire to cover the losses caused by a fire following an earthquake.

vided residential property insurance to an applicant, but cancelled or rejected that insurance if, at any time, the policyholder attempted to accept the mandatory earthquake offer, based upon heightened earthquake eligibility criteria. (Sen. Rules Com., Off. of Sen. Floor Analysts, SB 1976 (1987–1988 Reg. Sess.) as amended April 21, 1988, p. 2.) In 1988, the Legislature enacted CIC section 10086.5 to prohibit this practice. (*Id.*)

With the enactment of section 10086.5, the Legislature limited an insurer's right to reject or cancel a residential property insurance policy in a manner other than as dictated by CIC section 675 et seq. (*Williams v. State Farm Fire and Casualty Co.* (1990) 216 Cal.App.3d 1540, 1548 [265 Cal.Rptr. 644].) CIC section 10086.5, as originally adopted in 1988, prohibited the cancellation or rejection of a residential property insurance policy after an offer of earthquake coverage was accepted, if the cancellation or rejection was solely because the insured accepted the offer of earthquake coverage. (Stats. 1988, ch. 279, § 1.)

Non-renewal of Policyholders That Accepted Offer of Earthquake

During the next two years, the Legislature observed that some insurers still attempted to avoid insuring certain earthquake risks. Though insurers were prohibited from rejecting or canceling homeowners policyholders that accepted the offer of earthquake at intake, some insurers non-renewed existing policyholders after the first policy term, thus avoiding covering the earthquake risk.

CIC section 10086.5, as amended by Senate Bill 2183 (1990 Reg. Sess.), prohibited the non-renewal of a policy of residential property insurance solely because the policyholder had accepted the offer of earthquake. (CIC § 10086.5, subd. (b).) This measure was designed to “close the last loophole in the earthquake mandatory offer provision.” (Assem. Comm. on Fin. and Ins., Rep. on Sen. Bill No. 2183 (1990–1991 Reg. Sess.) as amended May 3, 1990, p.1.) Thus, as CIC section 10086.5, subdivision (b) currently reads: “An insurer shall not refuse to renew, reject or cancel a policy of residential property insurance after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage, except in cases in which the policy is terminated by the named insured.”

As additional protection for consumers, Senate Bill 2183 also added an affirmative prohibition against underwriting guidelines that discriminate against persons who attempt to accept or continue earthquake coverage. That prohibition is now codified in CIC section 10086.5, subdivision (c).

With 10086.5, the Legislature Intended to Restrict Insurer Underwriting Practices

The Assembly Committee on Finance and Insurance observed that the “core issue posed by [Senate Bill 2183] for insurers is whether or not California law, at any point in the residential insuring transaction, affords insurers the ability to decline to insure a particular residential property based solely upon adverse property characteristics which make it especially susceptible to damaging loss in an earthquake.” (Assem. Com. on Finance and Ins., Rep. on Sen. Bill No. 2183 (1990–1991, Reg. Sess.) as proposed to be amended on May 3, 1990, p.2.) The ultimate adoption of Senate Bill 2183 and the resultant codification of CIC section 10086.5, subdivision (c), demonstrated the Legislature's intent to prohibit such a practice.

Subdivision (c) expressly provides that underwriting guidelines cannot be used in a manner that discriminates against persons who accept the mandatory earthquake offer. The Legislative intent behind section 10086.5 reaffirms what is already provided by the language of the statute; insurance companies are prohibited from rejecting, canceling, or nonrenewing residential policyholders because the insurer perceives that the policyholder's home presents an unusually high risk of loss due to an earthquake. Moreover, insurers are prohibited from using underwriting standards applicable to residential property insurance in such a way that negatively impacts persons who wish to accept the mandatory earthquake offer. (CIC § 10086.5, subd. (c).) This fact is, perhaps, most apparent from a review of the comments in opposition to the law, as reprinted in the report of the third and final reading of Senate Bill 2183. The bill analysis prepared for the third and final reading includes a summary of an insurer's opposition to the bill. The insurer opposed the bill because, as the insurer correctly points out, Senate Bill 2183 prevents an insurer “from nonrenewing a policy of homeowner's insurance where the policyholder has accepted an offer of earthquake insurance and it is determined that the risk is extraordinary.” (Sen. Fin. & Ins. Com., 3d reading analysis of Sen. Bill No. 2183 (1990–1991 Reg. Sess.) as amended August 14, 1990, p.2.)

Effect of Proposed Action

The Proposed Regulations are Necessary to Implement, Interpret and Make Specific CIC § 10086.5 and the Related Earthquake Statutes

The Commissioner is aware that some insurers believe the mandatory earthquake offer statutes remain vague on the subject of permissible underwriting guidelines and that some insurance carriers continue to believe that CIC section 10086.5, subdivision (c) and its

related provisions still permit insurers to refuse to insure certain residential properties with extraordinary earthquake risks. Specifically, some insurance carriers continue to use underwriting guidelines which specifically reject some residential property insurance applications, due to the subject property's unique risk of loss from earthquake. Thus, by creating eligibility criteria for a residential property insurance policy which denies coverage to certain earthquake risks, these insurers avoid making the mandatory offer of earthquake to those who own the property at unique risk.

Insurers who operate in this matter point to CIC section 10082, subdivision (b), which states, in part: ". . . nothing in this chapter shall require an insurer to issue a policy of residential property insurance except in accordance with the insurer's usual underwriting standards." Based upon this provision, some insurers argue that they are permitted to reject certain unique earthquake risks because such a practice is "in accordance with the insurer's usual underwriting standards." For this reason, some insurers believe that the prohibition against the use of underwriting eligibility standards that discriminate against earthquake risks does not apply to any underwriting guideline that the insurer believes to be a "usual underwriting standard." While some insurers have argued that this makes the underwriting restrictions of CIC section 10086.5(c) ambiguous, the Commissioner has determined that such an argument is contrary to the express language and Legislative intent behind the mandatory earthquake offer.

Currently some insurers use underwriting eligibility guidelines that effectively exclude insurance coverage for homes with increased earthquake risks. For example, these insurers place foundation bolting requirements and retrofitting requirements in their homeowner's underwriting eligibility criteria, effectively "screening out" certain earthquake risks by refusing to issue homeowner's insurance to such risks in the first instance.

The purpose of these regulations is to implement, interpret and make specific Chapter 8.5 of the CIC, and specifically, those provisions of the CIC which recognize that earthquake insurance must be made available to all interested consumers without discriminating against consumers who have homes that present a unique risk of loss due to earthquake. Proposed regulation section 2399.0 identifies the purpose and scope of the proposed regulations. Section 2399.1 establishes specific examples of prohibited underwriting eligibility criteria, and recognizes the insurers' burden to demonstrate that any allegedly discriminatory underwriting guideline does not violate any provision of the CIC. By prohibiting the use of any eligibility guideline which discriminates against residential property owners who wish to accept an offer of earthquake coverage, the pro-

posed regulations set forth effective tools to enforce the mandatory earthquake offer. At the same time, proposed regulation section 2399.2 recognizes the needs of the insurance industry to file adequate rates which contemplate the unique risks for this catastrophe insurance line. Finally, proposed regulation section 2399.3 emphasizes the Commissioner's intention to maximize the effectiveness of these proposed regulations.

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

The Commissioner has not scheduled a pre-notice public discussion for this rulemaking action. The proposed regulations do not involve complex proposals. Additionally, the proposed regulations do not represent a large number of proposals that might otherwise make review during the public comment period difficult. In accordance with Government Code section 11346.45, therefore, a pre-notice public discussion was not scheduled for this rulemaking action because the proposed regulations do not involve issues of complexity.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS OR COSTS WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTIONS 17500 THROUGH 17630

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH OTHER STATES

The Commissioner has made an initial determination that the adoption of this regulation may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Commissioner has not considered proposed alterna-

tives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

The types of businesses affected by the proposed regulations are insurers that transact residential property insurance in the State of California. The proposed regulations will require insurers to offer residential property insurance and earthquake insurance to all insurance applicants in a manner which does not discriminate against persons who own properties that pose a unique risk of loss due to earthquake. This may affect those businesses that have traditionally refused to insure certain residential properties, on grounds related to such properties' risk of earthquake loss. Insurers that have traditionally refused to insure certain residential properties under these circumstances, however, do not comply with the requirements of CIC section 10086.5. Any economic impact that this regulation may have on insurers that are not in compliance with CIC section 10086.5, therefore, is inescapable, given the relevant statutory provisions.

POTENTIAL COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of existing businesses, and the expansion of businesses currently operating in the State. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

While the proposed regulations are likely to increase the availability of residential property and earthquake insurance, the regulations will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed action. The purpose of the proposed regulations is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulation.

IMPACT ON SMALL BUSINESS

The matters proposed herein will affect insurance companies, and therefore will not affect small business. (See Gov. Code § 11342.610, subd. (b), para. (2).)

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

ACCESS TO THE TEXT OF REGULATIONS AND STATEMENT OF REASONS

The Commissioner has prepared an initial statement of reasons that sets forth the reasons for the proposed action. The Commissioner also has available all the information upon which this proposed action is based and the express terms of the proposed action. Upon request, the initial statement of reasons will be made available for inspection and copying. Requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying

by **prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon **written or e-mail** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Just to the left of the center of the page, click the heading 'Consumers.' In this section, scroll down until you see the subheading 'Regulatory Activity.' Click on the nearby 'Proposed Regulations — Search' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH03030726" (the Department's regulation file number for these regulations) in the 'Search for' field. Alternatively, search using as your search term the California Insurance Code number of a code section that the regulations implement (for instance, "10086.5"), or search by keyword ("earthquake," for example or "residential"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Regulations Implementing Nondiscrimination Provisions Of Insurance Code' link, and click it. Links to the documents associated with these regulations will then be displayed.

AVAILABILITY OF MODIFIED TEXT OF REGULATION

In response to public comment, the Commissioner may determine that changes to the proposal are appropriate. If those changes are sufficiently related to the original text, such that the public had adequate notice of the proposal, as amended, copies of the amended text will be sent to all persons who testified or presented comments at the public hearing or submitted written comments during the comment period, and to anyone who requested information regarding the proposal. Thereafter, the Commissioner will accept written comments, arguments, evidence and testimony, concerning the changes only, for a period of at least 15 days prior to adoption.

At least 45 days notice will be given if the changes are not sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action.

TITLE 14. CALIFORNIA RESOURCES AGENCY

NOTICE OF PROPOSED ACTION AMENDING GUIDELINES IMPLEMENTING THE CALIFORNIA ENVIRONMENTAL QUALITY ACT June 2006

The California Resources Agency ("the Resources Agency") is proposing to update certain guidelines implementing the California Environmental Quality Act ("CEQA"), which is found in sections 21000–21177 of the Public Resources Code ("PRC"), in order to reflect certain legislative changes to CEQA. These guidelines are promulgated in the California Code of Regulations, title 14, sections 15000–15387 (the "Guidelines"). This action consists of the adoption of amendments to and the repeal of existing sections of the Guidelines, and the adoption of new sections of the Guidelines, as described below.

STATUTORY AUTHORITY

PRC Section 21083 requires the adoption of the Guidelines to explain and implement CEQA. PRC section 21083, subdivision (f) requires the Resources Agency, in consultation with the Governor's Office of Planning and Research ("OPR"), to certify, adopt and amend the Guidelines at least once every two years.

PROPOSED ACTION

The proposed action clarifies and updates the Guidelines to reflect recent legislative changes to CEQA, specifically legislation: (i) amending sections 21083.9, 21090, 21091, 21151, 21151.4, 21151.8, 21151.9, 21157.6, and 21165 of the Public Resources Code; (ii) adding sections 21098, 21152.1, 21159.20–21159.26 of the Public Resources Code; (iii) amending sections 10910, 10911, 10912, and 10914 of the Water Code; and (iv) repealing section 10913 of the Water Code. The changes to the Guidelines proposed in this action are as follows:

Add Guidelines sections: 15155, 15190.5 and Article 12.5, which includes sections 15191, 15192, 15193, 15194, 15195, 15196.

Amend Guidelines sections: 15053, 15061, 15062, 15072, 15073, 15074, 15082, 15087, 15105, 15179, 15180, 15186.

Repeal Guidelines section: 15083.5.

PUBLIC HEARING

A public hearing is not scheduled. Any interested person or his or her duly authorized representative may request a public hearing, in writing, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the changes in this action to the Resources Agency. Written comments must be received by the Resources Agency no later than 5:00 p.m. on July 31, 2006 in order to be considered. Written comments may be delivered, mailed, or transmitted by facsimile or electronic mail. Written comments should be addressed as follows:

Sandra Ikuta, Deputy Secretary and General Counsel

The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
Fax: (916) 653–8123

cc: Caryn Holmes, Staff Counsel
California Energy Commission
1516 Ninth Street
Sacramento, CA 95814
Fax: (916) 654–3843

Electronic mail: ceqa.rulemaking@resources.ca.gov

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Resources Agency is proposing this action to update the Guidelines to reflect certain legislative changes to CEQA.

CEQA requires public agencies to review the environmental impacts of proposed projects, to prepare and review environmental impact reports (EIRs), negative declarations, and mitigated negative declarations, and to consider feasible alternatives and mitigation measures that would substantially reduce significant adverse environmental effects. As noted above, Section 21083 of the Public Resources Code requires the Secretary for Resources, in consultation with OPR, to periodically update the Guidelines. The Resources Agency reviewed the existing Guidelines and determined that in some cases, the Guidelines had not been updated to reflect legislative changes to CEQA that had been enacted during the period from 2001 through 2005. The broad objective of this proposed action is to clarify and update the Guidelines to be consistent with these recent legislative enactments that have modified CEQA. Any specific objectives are explained in the summaries below.

The changes proposed in this action will affect twenty-one sections of the Guidelines. The summaries set forth below describe the existing laws and regulations related to the changes proposed in this action and explain the effect of the proposed action.

The proposed action does not duplicate or conflict with any federal statutes or regulations. CEQA is similar in some respects to the National Environmental Policy Act (“NEPA”), 42 U.S.C. sections 4321–4343, but NEPA requires environmental review of federal actions by federal agencies while CEQA requires environmental review of state and local projects by state and local agencies in California. Moreover, although both NEPA and CEQA require an analysis of environmental impacts, the substantive and procedural requirements of the two statutes are different. Most significantly, CEQA requires feasible mitigation of environmental impacts, while NEPA does not require mitigation. A state or local agency must complete a CEQA review even for those projects for which NEPA review is also applicable, although Guidelines sections 15220–15229 allow state, local and federal agencies to coordinate a review when projects are subject to both CEQA and NEPA. Because a state or local agency cannot avoid CEQA review, and because CEQA and NEPA are not identical, guidelines for CEQA are necessary and do not duplicate the Code of Federal Regulations.

15053. DESIGNATION OF LEAD AGENCY BY THE OFFICE OF PLANNING AND RESEARCH

Guidelines section 15053 describes the process that agencies may use to submit a dispute to OPR for resolution and designation of a lead agency.

The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) to Guidelines section 15053, implement and make specific the provisions of Senate Bill ("SB") 648 (Chapter 267, Statutes of 2005), which amended PRC section 21165. As amended, PRC section 21165 defines the term "dispute" and provides that OPR shall not designate a lead agency in the absence of such a dispute. The proposed amendments to subdivisions (a) and (c) of Guidelines section 15053, and the proposed addition of subdivision (b) of Guidelines section 15053, reflect the amendments to PRC section 21165. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments and addition is PRC section 21083.

15061. REVIEW OF EXEMPTION

Guidelines section 15061 describes when a project or activity is exempt from CEQA.

The proposed addition of subdivision (b)(5) to Guidelines section 15061 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). SB 1925 added PRC sections 21159.20–21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. The proposed addition of subdivision (b)(5) to Guidelines section 15061 reflects the additional exemptions from CEQA provided due to the enactment of PRC sections 21159.21, 21159.22, 21159.23, and 21159.24.

The proposed addition of subdivision (e) to Guidelines section 15061 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (e) to Guidelines section 15061 reflects the change in PRC section 21151 with respect to projects exempt from CEQA.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed additions is PRC section 21083.

15062. NOTICE OF EXEMPTION

Guidelines section 15062 describes the use and required content of the notice of exemption when a public agency approves or determines to carry out a project that is exempt from CEQA.

The proposed amendment of subdivision (a) to Guidelines section 15062 clarifies the applicability of that section by a cross-reference to Guidelines section 15061. The proposed addition of subdivision (e) to Guidelines section 15062 implements and makes specific the provisions of Assembly Bill ("AB") 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of subdivision (e) to Guidelines section 15062 reflects the requirements set forth within PRC section 21152.1.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

15072. NOTICE OF INTENT TO ADOPT A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15072 describes a lead agency's obligations to provide notices of intent to specified recipients before the lead agency adopts a negative declaration or a mitigated negative declaration.

The proposed addition of subdivision (f) to Guidelines section 15072 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of subdivision (f) to Guidelines section 15072 reflects the requirements of PRC section 21098 with respect to notices of intent to adopt negative declarations or mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

15073. PUBLIC REVIEW OF A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15073 requires a state lead agency to provide a public review period when a negative declaration or mitigated negative declaration and initial study are submitted to the State Clearinghouse.

The proposed amendment to subdivision (b) of Guidelines section 15073 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents.

The proposed amendment to subdivision (b) of Guidelines section 15073 reflects the changes to PRC section 21091.

The authority for the adoption of the proposed amendment is PRC section 21083.

15074. CONSIDERATION AND ADOPTION OF A NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15074 describes the process by which a negative declaration or mitigated negative declaration should be considered and, if applicable, adopted by a decisionmaking body.

The proposed addition of subdivision (f) to Guidelines section 15074 implements and makes specific the provisions of SB 1393 (Chapter 1121, Statutes of 2002), amending PRC section 21151. As amended, PRC section 21151 provides that a decision by a non-elected decisionmaking body of a local lead agency to certify an EIR, approve a negative declaration or mitigated negative declaration, or determine that a project is exempt from CEQA, may be appealed to the agency's elected decisionmaking body. The proposed addition of subdivision (f) to Guidelines section 15074 reflects the change in PRC section 21151 with respect to negative declarations and mitigated negative declarations.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed addition is PRC section 21083.

15082. NOTICE OF PREPARATION AND DETERMINATION OF SCOPE OF EIR

Guidelines section 15082 describes the consultation process (commonly referred to as "scoping"), including the use of a notice of preparation of a draft EIR, among a lead agency and responsible and trustee agencies where the lead agency is preparing an EIR that will be used by these agencies in reviewing and approving a project.

The proposed amendment to subdivision (a) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), adding PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15082 reflects the requirements of PRC section 21098 with respect to notices of preparation of an EIR.

The proposed amendment to subdivision (c)(1) of Guidelines section 15082 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), amending PRC section 21083.9. As amended, PRC section 21083.9 states that any scoping meeting conducted in the city or county in which a project is located pursuant to NEPA will satisfy the state scoping meeting requirement for projects of statewide, regional or areawide significance provided certain additional requirements are met. The proposed amendment to subdivision (c)(1) of Guidelines section 15082, reflects the changes to PRC section 21083.9. Non-substantive changes to the format and layout of subdivisions (c)(1)–(c)(3) of Guidelines section 15082 and non-substantive clarifying changes to the numbering were also made.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

15083.5. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES [Repeal]

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things,

PRC section 21151.9 and Government Code sections 10910–10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. The proposed change would delete Guidelines section 15083.5 and replace it with proposed new Guidelines section 15155 to reflect the changes enacted in SB 610. Proposed new Guidelines section 15155 will be discussed below.

The authority for the adoption of the proposed repeal of this section is PRC section 21083.

15087. PUBLIC REVIEW AND DRAFT EIR

Guidelines section 15087 sets forth procedures for public notice and public review of draft EIRs.

The proposed amendment to subdivision (a) of Guidelines section 15087 implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative declaration to that military agency for certain projects located within the specified areas of concern. The proposed amendment to subdivision (a) of Guidelines section 15087 reflects the requirements of PRC section 21098 with respect to notices of availability of a draft EIR.

The proposed amendment to subdivision (e) of Guidelines section 15087 implements and makes specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (e) of Guidelines section 15087 reflects the changes to PRC section 21091.

Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendments is PRC section 21083.

15105. PUBLIC REVIEW PERIOD FOR A DRAFT EIR OR A PROPOSED NEGATIVE DECLARATION OR MITIGATED NEGATIVE DECLARATION

Guidelines section 15105 describes the time periods required for the public review of a draft EIR, proposed negative declaration, or mitigated negative declaration.

The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, implement and make specific the provisions of SB 648 (Chapter 267, Statutes of 2005), which amended PRC section 21091. As amended, PRC section 21091 specifies the time for commencing the public review period and the state agency review period for draft EIRs, proposed negative declarations, and proposed mitigated negative declarations, specifies how the state agency review period must be calculated, and specifies the time frame for the State Clearinghouse's distribution of CEQA documents. The proposed amendment to subdivision (c) of Guidelines section 15105, and the proposed addition of subdivision (e) to Guidelines section 15105, reflect the changes to PRC section 21091.

The authority for the adoption of the proposed amendment and addition is PRC section 21083.

15155. CITY OR COUNTY CONSULTATION WITH WATER AGENCIES **[New Section]**

The existing Guidelines section 15083.5 generally addresses analyses and determinations regarding water supply availability that must be undertaken by lead agencies for specified projects. The existing Guidelines section 15083.5 was based on SB 901 (Chapter 881, Statutes of 1995), which enacted, among other things, PRC section 21151.9 and Government Code sections 10910–10915. SB 901 was amended by SB 610 (Chapter 643, Statutes of 2001). Among other things, SB 610 amended PRC section 21151.9 of the Public Resources Code, sections 10910, 10912, 10915 of the Water Code, and repealed section 10913 of the Water Code. These amendments revised the requirements imposed on city or county lead agencies with respect to the development of a water supply assessment for specified types of projects and required the inclusion of the water supply assessment and other information in any environmental document prepared for the project. Proposed Guidelines section 15155 implements and makes specific the provisions of SB 610 (Chapter 643, Statutes of 2001).

The proposed addition of Guidelines section 15155 reflects the amended PRC sections 21151.9 as well as the amended Water Code sections 10910, 10911, 10912, and 10914, and the repeal of Water Code section 10913, as they apply to a lead agency's obligations under CEQA.

The authority for the adoption of the proposed addition is PRC section 21083.

15179. LIMITATIONS ON THE USE OF THE MASTER EIR

Guidelines section 15179 specifies limitations on the use of a Master EIR. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 implement and make specific the provisions of AB 2922 (Chapter 684, Statutes of 2004), which amended PRC section 21157.6. As amended, PRC section 21157.6 revises one of the limitations on the use of a Master EIR and allows a Master EIR that was certified more than 5 years prior to the filing of an application for the subsequent project to be used if the lead agency takes specified steps. The proposed amendments to subdivisions (a) and (b) of Guidelines section 15179 reflect the changes to PRC section 21157.6. The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed amendments is PRC section 21083.

15180. REDEVELOPMENT PROJECTS

Guidelines section 15180 describes special environmental review considerations for redevelopment projects.

The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) of Guidelines section 15180, implement and make specific the provisions of SB 649 (Chapter 625, Statutes of 2002), amending PRC section 21090. As amended, PRC section 21090 provides that an EIR for a redevelopment project may be a master, program or project EIR, and the EIR must state the type of EIR that is being prepared for the redevelopment project. The proposed addition of subdivisions (a) and (c) to Guidelines section 15180, and the proposed amendment of subdivision (b) to Guidelines section 15180, reflects the changes to PRC section 21090.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether the discussion sections are part of the Guide-

lines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, the Resources Agency proposes to update the reference citations to this section to reflect the statutory changes.

The authority for the adoption of the proposed amendment and additions is PRC section 21083.

15186. SCHOOL FACILITIES

Guidelines section 15186 provides special CEQA requirements that apply to school projects and projects located near schools.

The proposed amendments to subdivisions (b), (c), and (e) of Guidelines section 15186 implement and make specific the provisions of SB 945 (Chapter 689, Statutes of 2004) and SB 352 (Chapter 668, Statutes of 2003). SB 945 amended PRC section 21151.4 to change the term "acutely hazardous materials" to "extremely hazardous substances." SB 352 amended PRC section 21151.8 to require an EIR or negative declaration to disclose specified information relative to the location of a proposed school site and precludes a lead agency from approving certain school projects in specified locations unless certain findings are made. The proposed amendments to subdivisions (b), (c), and (e) to Guidelines section 15186 reflects the changes made to PRC sections 21151.4 and 21151.8.

The Resources Agency is also proposing to remove the discussion section that follows this Guideline because the proposed amendments make this discussion section outdated. These discussion sections are potentially sources of confusion, because it is not clear whether discussion sections are part of the Guidelines or have any legal effect. Therefore, the Resources Agency has decided to remove these discussion sections when the Guideline section to which they refer is changed. Additionally, non-substantive changes to the numbering within this section are proposed.

The authority for the adoption of the proposed new section is PRC section 21083.

15190.5. DEPARTMENT OF DEFENSE NOTIFICATION REQUIREMENT [New Section]

The proposed new section implements and makes specific the provisions of AB 1108 (Chapter 638, Statutes of 2002), which added PRC section 21098. PRC section 21098 provides that if the U.S. Department of Defense or a military service provides notice to a lead agency identifying specified areas of concern, such lead agency must submit a notice of preparation of an EIR, a notice of availability of a draft EIR, or a notice of intent to adopt a negative declaration or mitigated negative

declaration to that military agency for certain projects located within the specified areas of concern.

The proposed addition of Guidelines section 15190.5 reflects the language set forth in new PRC section 21098.

The authority for the adoption of the proposed new section is PRC section 21083.

15191–15196. ARTICLE 12.5 EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

[New Article]

The proposed new Article 12.5 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002) and AB 677 (Chapter 837, Statutes of 2003). SB 1925 added PRC sections 21159.20–21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances. AB 677 amended PRC section 21152.1 to require that an agency notify OPR when it determines that a project is exempt from CEQA under one of the preceding exemptions.

Article 12.5 organizes and sets forth new Guidelines sections 15191–15196 which implement PRC sections 21159.20–21159.26, as discussed in more detail below.

The authority for the adoption of the proposed new article is PRC section 21083.

15191. DEFINITIONS

[New Section]

The proposed addition of Guidelines section 15191 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002). Among other things, SB 1925 added PRC sections 21159.20–21159.26, which set forth statutory exemptions from CEQA for agricultural employee housing, low-income housing (affordable housing), and residential infill projects under specified circumstances.

The proposed Guidelines section 15191 sets forth the definitions of terms used in the regulations implementing the new statutory exemptions enacted by SB 1925. These definitions are set forth in PRC section 21159.20, as well as in various subdivisions of PRC sections 21061.3, 21064.3, 21065.3, 21087, and 21159.21–21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

15192. THRESHOLD REQUIREMENTS FOR EXEMPTIONS FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

[New Section]

The proposed Guidelines section 15192 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15192 establishes the threshold requirements for the exemptions identified in this Article and reflects the language set forth in new PRC sections 21159.21.

The authority for the adoption of the proposed new section is PRC section 21083.

15193. AGRICULTURAL HOUSING EXEMPTION

[New Section]

The proposed Guidelines section 15193 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15193 establishes specific requirements for the agricultural housing exemption and reflects the language set forth in new PRC section 21159.22.

The authority for the adoption of the proposed new section is PRC section 21083.

15194. AFFORDABLE HOUSING EXEMPTION

[New Section]

The proposed Guidelines section 15194 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15194 establishes specific requirements for the affordable housing exemption and reflects the language set forth in new PRC section 21159.23.

The authority for the adoption of the proposed new section is PRC section 21083.

15195. RESIDENTIAL INFILL EXEMPTION

[New Section]

The proposed Guidelines section 15195 implements and makes specific the provisions of SB 1925 (Chapter 1039, Statutes of 2002), described above. The proposed addition of Guidelines section 15195 establishes specific requirements for the residential infill exemption and reflects the language set forth in new PRC section 21159.24.

The authority for the adoption of the proposed new section is PRC section 21083.

15196. NOTICE OF EXEMPTION FOR AGRICULTURAL HOUSING, AFFORDABLE HOUSING, AND RESIDENTIAL INFILL PROJECTS

[New Section]

The proposed Guidelines section 15196 implements and makes specific the provisions of AB 677 (Chapter 837, Statutes of 2003), which added PRC section 21152.1. PRC section 21152.1 requires a local agency or project proponent to file a notice with OPR that a project is exempt from CEQA under PRC sections 21159.22, 21159.23, or 21159.24. The proposed addition of Guidelines section 15196 reflects the language set forth in new PRC sections 21152.1.

The authority for the adoption of the proposed new section is PRC section 21083.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Resources Agency has made the following initial determinations concerning the proposed changes to the Guidelines:

Mandates on Local Agencies and School Districts

The Resources Agency has initially determined that the proposed changes to the Guidelines will not impose a mandate on local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose mandates on local agencies and school districts. Among other things, PRC section 21098 (reflected in proposed changes to Guidelines sections 15072, 15082, 15087, and 15190.5) requires a lead agency to submit additional notices to military agencies under specified circumstances. PRC section 21151 (reflected in Guidelines sections 15061 and 15074) requires a local agency's elected decisionmaking body to hear an appeal under certain circumstances. SB 610 (reflected in Guidelines section 15155) revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability, and requires the inclusion of these analyses in any environmental document prepared for the project, under specified circumstances. PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186) require certain public agencies and certain school districts to make a number of specified determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. The proposed changes to the Guidelines merely reflect these legislative mandates. The proposed action clarifies and updates the Guidelines to be consistent with these recent legislative enactments, but does not create any new requirements. Therefore, the proposed action does not

itself impose a mandate on local agencies or school districts.

Costs or Savings to Local Agencies and School Districts or Federal Funding to the State of California

The proposed changes to the Guidelines do not impose additional requirements or costs on local agencies and school districts. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on local agencies and school districts. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on local agencies or school districts. The proposed changes do not result in any savings to local agencies and school districts, and do not result in any costs or savings in federal funding to the state.

Significant Adverse Economic Impacts on Business

The Resources Agency has initially determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could have an economic effect on business. Among other things, project proponents could incur additional costs in assisting lead agencies to comply with SB 610 (reflected in Guidelines section 15155), which revises the requirements imposed on cities and counties to prepare or obtain certain analyses relating to water availability and to require the inclusion in these analyses in any environmental document prepared for the project, under specified circumstances. In addition, project proponents could incur additional costs in assisting lead agencies to comply with PRC sections 21151.4 and 21151.8 (reflected in Guidelines section 15186), which require certain public agencies and certain school districts to make a number of determinations relating to air quality in the vicinity of a school or proposed school site before approving certain projects. However, the proposed changes to the Guidelines merely reflect these legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. Therefore, the proposed action does not itself have a significant, statewide adverse economic impact directly affecting business.

Cost Impacts on a Representative Person or Business

The Resources Agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on a representative private person or business.

Effect on Housing Costs

The Resources Agency has made an initial determination that the changes proposed in this action will not have an adverse impact on housing costs because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not impose any new requirements. As noted above, certain of the statutory changes enacted by the legislature that are reflected in this proposed action could impose costs on project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action will not itself have an adverse impact on housing costs.

Assessment of Potential to Create or Eliminate Jobs or Businesses within the State of California

The Resources Agency has assessed the potential for the proposed action to adversely affect California business enterprises and individuals, including whether it will affect the creation or elimination of jobs or the creation, elimination or expansion of businesses, as required by subdivision (b) of Government Code section 11346.3. The proposed action is not expected to have a positive or adverse effect on the creation or elimination of jobs or businesses within California because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. For the same reason, the Resources Agency has also initially concluded that the proposed changes will not affect the expansion of businesses currently doing

business within the state. Finally, the proposed action does not require any business to prepare a report.

As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. In addition, provisions of SB 610 (reflected in new Guidelines section 15155) may require a public water system to prepare a report. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect California business enterprises and individuals or require any business to prepare a report.

The Resources Agency's complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action is part of the rulemaking file, and it is available from the Resources Agency contact persons named in this notice.

Effect on Small Businesses

The proposed actions will not affect small business because the proposed changes clarify and update the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but do not impose any new requirements. As noted above, certain of the statutory changes enacted by the Legislature that are reflected in this proposed action could potentially affect project proponents. However, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself adversely affect small businesses.

Economic and Fiscal Impact

Pursuant to subdivision (a)(6) of section 11346.5 of the Government Code, the Resources Agency is required to provide "an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state. . . ."

The Resources Agency has provided this estimate in its complete Economic and Fiscal Impact Statement (Form Std 399) for the proposed action. This Economic and Fiscal Impact Statement is part of the rulemaking file, and is available from the Resources Agency contact persons named in this notice. The Form Std 399 provides information regarding costs or savings to any

state agency, local agency or school district and cost or savings in federal funding to the state. As stated within Form Std 399, the Resources Agency has initially determined that most of the proposed changes in this action have no or de minimis impacts on state agencies, local agencies or school districts. The Resources Agency is aware that certain of the statutory changes enacted by the Legislature that are reflected in this proposed action impose costs on public agencies. The Resources Agency is not aware of any savings that would result from any of the statutory changes enacted by the Legislature that are reflected in this proposed action. However, with respect to any costs or savings, the proposed changes to the Guidelines merely reflect the legislative requirements. The proposed action clarifies and updates the Guidelines to be consistent with recent legislative enactments that have modified CEQA, but does not create any new requirements. Therefore, the proposed action does not itself impose any costs on, or result in any savings for, any state agency, local agency or school district. Moreover, as stated within Form Std 399, the Resources Agency has initially determined that the proposed action does not result in any cost or savings in federal funding to the state.

CONSIDERATION OF ALTERNATIVES

In accordance with subsection 11346.5(a)(13) of the Government Code, the Resources Agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

INQUIRIES AND ADDITIONAL INFORMATION INCLUDING AVAILABILITY OF CHANGED OR MODIFIED TEXT

Inquiries relating to the proposed administrative action may be directed to Sandra Ikuta, Deputy Secretary and General Counsel, or Mary Akens, Assistant General Counsel, at (916) 653-5656.

The Resources Agency has prepared an Initial Statement of Reasons for the proposed action that provides an explanation of the purpose and justification for the proposed action. Anyone may view and print a copy of the statement or the text of the proposed changes by accessing the following page on the Resources Agency's Internet website: www.ceres.ca.gov/ceqa/index.html. Copies of the initial statement and text of the guidelines are also available upon request from Mary Akens, As-

sistant General Counsel, at (916) 653-5656. The entire rulemaking file is available for public inspection at 1416 Ninth Street, Suite 1311, Sacramento, California 95814.

The Resources Agency will post the Final Statement of Reasons and any future notices related to the proposed action on the Agency's Internet website www.ceres.ca.gov/ceqa/index.html. Anyone wishing to receive future notices related to the proposed action and/or receive a copy of the Final Statement of Reasons once it has been prepared should submit a written request containing his or her postal mailing address to Mary Akens, Assistant General Counsel, Resources Agency, State of California, 1416 Ninth Street, Suite 1311, Sacramento, California 95814. These requests can also be submitted by fax at (916) 653-8123.

If the Resources Agency makes changes in the text of any proposed changed guideline, from that which was originally made available, the revised text will be available to the public at least fifteen (15) days prior to the date when the Resources Agency considers the proposed guidelines for adoption, amendment, or repeal, unless the change is "(1) nonsubstantial or solely grammatical in nature, or (2) sufficiently related to the original text that the public was adequately placed on notice that the change could result from the originally proposed regulatory action." (Govt. Code, sec. 11346.8, subd. (c).) As further stated in section 11346.8, subdivision (c) of the Government Code:

"If a sufficiently related change is made, the full text of the resulting adoption, amendment, or repeal, with the change clearly indicated, shall be made available to the public for at least 15 days before the agency adopts, amends, or repeals the resulting regulation. Any written comments received regarding the change must be responded to in the final statement of reasons. . . ."

(Govt. Code, sec. 11346.8, subd. (c).) The Resources Agency will comply with these requirements. This information will also be made available on the Resources Agency website at www.ceres.ca.gov/ceqa/index.html.

PLAIN ENGLISH DETERMINATION AND AVAILABILITY OF TEXT

The proposed final guidelines were prepared pursuant to the standard of clarity provided in Government Code section 11349 and the plain English requirements of Government Code sections 11342.580 and 11346.2, subdivision (a)(1). The proposed changes to the guidelines are considered non-technical and were written to be easily understood by the parties that will use them. The purpose of the proposed changes to the Guidelines is to interpret the requirements of CEQA and to provide a comprehensive point of reference for those who are

affected by CEQA's mandates, both in government and the private sector. Specifically, the proposed changes will make it more clear what lead agencies and project applicants must do to comply with CEQA.

The text of the proposed changes to the Guidelines has been drafted, and is available in plain English. The text is available through the contact address and telephone number listed herein or on the CEQA website at www.ceres.ca.gov/ceqa/index.html.

**TITLE 15. BOARD OF PAROLE
HEARINGS
(FORMERLY BOARD OF
PRISON TERMS)**

**NOTICE OF PROPOSED
REGULATORY ACTION
RN 06-01**

**SUBJECT: NOTICE AND CONDITIONS OF
PAROLE**

NOTICE IS HEREBY GIVEN that the Board of Parole Hearings (Board) proposes to amend sections (§§) 2510, 2511, 2512 and 2513 of Title 15, Division 2, California Code of Regulations (CCR) after considering all comments, objections, and recommendations regarding the proposed action.

AUTHORITY/REFERENCE

These regulations are submitted pursuant to the Board's authority under Government Code § 12838.4, Penal Code §§ 3052, 3068, and 5076.2, and *Morrissey v. Brewer*, 408 U.S. 471 (1972), and are amended to implement, interpret, and/or make specific Health and Safety Code § 11590, Penal Code §§ 186.22, 290, 457.1, 3000, 3052, 3053, 3053.2, 3056, 3057, 3060, 3060.5, and 12020, *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW), and *Valdivia v. Schwarzenegger* (2003) USDC-ED (No. C-94-0671-LK).

PUBLIC HEARING

A public hearing regarding the proposed regulatory action has not been scheduled. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than July 14, 2006, which is the last weekday 15 days before the close of the written comment period on July 31, 2006.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulations to the Board. ***The written comment period on the proposed regulations will commence on June 16, 2006, and will close at 5:00 p.m. on July 31, 2006.*** All comments must be submitted in writing (by mail, fax, or e-mail) to the Agency Contact Person identified in this Notice by that time in order for the comments to be considered by the Board.

Comments may be submitted to:

Lori Manieri, Regulations Coordinator
Board of Parole Hearings
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile: (916) 322-3475
E-mail: Lori.Manieri@cdcr.ca.gov

**INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW**

SB 737 abolished the former Youth and Adult Correctional Agency, which consisted of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Board of Corrections, the Youth Authority Board, and the Narcotic Addict Evaluation Authority, and created the Department of Corrections and Rehabilitation, which consists of the Division of Adult Operations, the Division of Adult Programs, the Division of Juvenile Justice, the Corrections Standard Authority, the Board of Parole Hearings, the State Commission on Juvenile Justice, the Prison Industry Authority, and the Prison Industry Board.

Government Code § 12838.4 created the Board of Parole Hearings and vested the Board with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of its predecessor entity, Board of Prison Terms.

Penal Code § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

Penal Code § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

The federal courts in *Armstrong v. Schwarzenegger* (2002) USDC-ND (No. C-94-2307-CW) and *Valdivia v. Schwarzenegger* (2003) USDC-ED (No. C-94-0671-LK) issued court orders that the Board shall develop and implement policies and procedures that accommodate and effectively communicate with

prisoners and parolees with disabilities at all parole proceedings, including parole revocation proceedings.

NECESSITY FOR THE PROPOSED AMENDMENTS

This regulatory action is necessary to amend the regulations of the Board to comply with the orders for the use of effective communication in the *Armstrong* and *Valdivia* cases.

Section 2510. General.

A reference to Government Code § 12838.4 (added by Stats. 2005, Ch. 10) was added to the authority section of the regulation.

Section 2511. Notice of Parole.

This section currently describes the contents of the notice of parole that prisoners and inmates receive prior to their release on parole.

These amendments are necessary to conform the language of the regulation to that contained in the recently amended notice of parole so that prisoners and parolees have adequate notice of their conditions of parole using effective communication as ordered by the Court in the *Armstrong* and *Valdivia* cases.

Section 2512. General Conditions of Parole.

This section currently describes the general conditions of parole contained in the notice of parole that prisoners and inmates receive prior to their release on parole.

The amendments are necessary to conform the language of the regulation to the language contained in the recently amended notice of parole so that it effectively communicates the general conditions of parole to prisoners and parolees as ordered by the Court in the *Armstrong* and *Valdivia* cases.

Section 2513. Special Conditions of Parole.

This section currently describes the special conditions of parole contained in the notice of parole.

The amendments are necessary to conform the language of the regulation to the language contained in the recently amended notice of parole so that it effectively communicates the special and special mandatory conditions of parole to prisoners and parolees as ordered in the *Armstrong* and *Valdivia* cases.

LOCAL MANDATES

The Board has determined that the proposed action imposes no mandate upon local agencies or school districts.

FISCAL IMPACT STATEMENT

- Cost to any local agency or school district which must be reimbursed in accordance with Government §§ 17500 through 17630: *None*
- Cost or savings to any state agency: *None*
- Other non-discretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the state: *None*

EFFECT ON HOUSING COSTS

The Board has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Board has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES

The Board has determined that the proposed amendments will not affect small businesses because they apply only to inmates and parolees of California penal institutions.

ASSESSMENT OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION

The Board has determined that the proposed amendments to regulations will have no effect on the creation of new, or the elimination of existing jobs or businesses within California, or affect the expansion of businesses currently doing business in California.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulatory action.

CONTACT PERSON

Please direct requests for copies of the initial statement of reasons, the proposed text of the regulations, or other information upon which the rulemaking is based to:

Lori Manieri, Regulations Coordinator
Board of Parole Hearings
1515 "K" Street, Sixth Floor
Sacramento, CA 95814
Telephone: (916) 445-5277
Facsimile: (916) 322-3475
E-mail: Lori.Manieri@cdcr.ca.gov

In any such inquiries, please identify the action by using the Board's regulation control number RN 06-01.

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above: **Teresa Arcure (916) 322-9424.**

Questions on the substance of the proposed regulatory action may be directed to: **Marc Remis, (916) 322-6729.**

Website Access: Materials regarding this proposal can be accessed from the Board's website at http://www.cdcr.ca.gov/DivisionsBoards/BOPH/reg_revisions.html

AVAILABILITY OF THE INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared and will make available the initial statement of reasons and the text of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all the information on which the proposal is based, is available to the public upon request from the agency contact person indicated above. Additionally, this notice of proposed action, the initial statement of reasons, and the proposed text of the regulations are available on the Board's website at http://www.cdcr.ca.gov/DivisionsBoards/BOPH/reg_revisions.html

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Following the preparation of the final statement of reasons, copies may be obtained from the Board contact person or the Board's website at http://www.cdcr.ca.gov/DivisionsBoards/BOPH/reg_revisions.html

AVAILABILITY OF CHANGES TO PROPOSED TEXT

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

TITLE 16. BOARD OF PSYCHOLOGY

DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Holiday Inn San Diego Downtown, 1617 First Avenue, San Diego, California, at 9:00 a.m., or as soon as practicable thereafter, on August 5, 2006. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on Wednesday, August 2, 2006, or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 2930 of the Business and Profes-

sions Code, and to implement, interpret or make specific sections 728, 2930, and 2936 of said Code, the board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, section 728 of the Business and Professions Code, states that any time it is suspected that a psychotherapist had alleged sexual intercourse or alleged sexual contact with a previous patient, it is the current psychotherapist's responsibility to provide to the patient a brochure promulgated by the Department of Consumer Affairs (DCA). The psychotherapist shall discuss with the patient the contents of such brochure. In addition, pursuant to section 2936 of the Business and Professions Code, licensees and registrants are currently required to post, in a conspicuous location in their principal psychological business office, a *Notice to Consumers* notifying consumers of who to contact regarding questions or complaints in the practice of psychology.

This proposed regulation would adopt a new section 1396.5 which would require licensed psychologists, who provide services to a client in a language other than English, to provide to the client as appropriate the translations of required or approved notices or publications made available by the board in that language. This proposed regulation would also require licensed psychologists to discuss with the patient the content of any required or approved notice or publication only available in English as well as the Notice to Consumers. As there are clients of all nationalities and ethnicities who do not read or speak English, this would ensure that they understand their rights as consumers of such services.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant

statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The board is not aware of any cost impacts that a representative private person

or

business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulations would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Psychology at 1422 Howe Avenue, Suite 22, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE
FINAL STATEMENT OF REASONS AND
RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kathy Bradbury
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825
Telephone No.: (916) 263-0712
Fax No.: (916) 263-2697
E-Mail Address: kathy_bradbury@dca.ca.gov

The backup contact person is:

Name: Jeffrey Thomas
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825
Telephone No.: (916) 263-1617
Fax No.: (916) 263-2697
E-Mail Address: jeff_thomas@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.psychboard.ca.gov.

**TITLE 22. DEPARTMENT OF HEALTH
SERVICES**

ACTION: Notice of Proposed Rulemaking
Title 22, California Code of Regulations
SUBJECT: Estate Recovery Claim Exemption
Regulations, R-14-04

PUBLIC PROCEEDINGS

Notice is hereby given that the California Department of Health Services will conduct a public hearing commencing at 10 a.m. on August 2, 2006 in the Auditorium, 1500 Capitol Avenue, Sacramento, CA, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in this notice.

INFORMATIVE DIGEST/POLICY STATEMENT
OVERVIEW

Welfare and Institutions (W&I) Code sections 10725 and 14124.5 authorize the director of the Department of Health Services (Department) to adopt, amend, or repeal regulations as necessary and proper to carry out the purposes and intent of the statutes governing the Medi-Cal Program.

Existing federal law, Title 42, United States Code (USC) section 1396p, and state law, W&I Code section 14009.5, require the Department to seek reimbursement from deceased Medi-Cal beneficiaries' estates for certain Medi-Cal paid services provided on or after the individual's 55th birthday, unless specific exemptions or other limitations apply. Under the estate recovery (ER) program an estate is defined as all real and personal property and other assets in which the decedent (Medi-Cal beneficiary) had any legal title or interest at the time of death (to the extent of such interest), including assets conveyed through joint tenancy, tenancy in common, survivorship, life estate, living trust, annuities purchased on or after September 1, 2004, or life insurance policies and retirement accounts that name the estate as the beneficiary or revert to the estate. The Department's ER claim includes nursing facility services, home and community-based services, and related hospital and prescription drug services. Federal law also allows states to recover for other services as specified under their State Plan. In California, these include all payments for health care and insurance premiums, payments to managed care plans and services provided to Medi-Cal beneficiaries after their 55th birthday. The Department's claim against the estate of a deceased Medi-Cal beneficiary is limited to the value of the decedent's assets or the amount of the medical services paid by Medi-Cal, whichever is less.

In 1993, the Department added Title 22, California Code of Regulations (CCR) sections 50960 through 50964, to implement, interpret and make specific state and federal laws governing ER activities for the Medi-Cal Program. Sections 50960 through 50964 specifically address estate recovery activities related to: definitions, estate claims, notification, substantial hardship criteria, and estate hearings. In addition, Section 50965 was recently adopted to specify the use of a voluntary post death lien, among other provisions.

As a result of a settlement agreement and permanent injunction in the case of *California Advocates for Nursing Home Reform et al. v. Diana M. Bontá, et al.* (2003) by the City and County of San Francisco Superior Court, the Department is required, in part, to submit regulations to the Office of Administrative Law (OAL) that clarify the disability exemption and describe the documentary evidence requirements. This proposed

regulatory action would fulfill the Department's compliance with the court, for this part, and provide the necessary clarity and detail to enable the Department to consistently administer and implement the estate recovery mandates of state and federal law.

This proposed regulatory action would affect Title 22, CCR, by amending sections 50961 and 50962, and adopting new section 50966, to specifically accomplish the following:

1. Specify that a surviving child, or his or her representative, shall provide documentary evidence to the Department that he or she is a child of the decedent who is under age 21, or blind or disabled within the meaning of Section 1614 of the Federal Social Security Act (Title 42, USC section 1382c), in order for the Department to withdraw the ER claim.
2. Specify the documentary evidence needed to substantiate exemption from the ER claim and the burden of providing such evidence.
3. Specify the time when the surviving child must be under the age of 21 and when blindness or a disability must exist to qualify for an exemption.
4. Provide notification provisions to ensure that surviving children of a decedent are informed of the basis for an exemption from an ER claim and the right to seek an exemption.
5. Specify that in the absence of existing evidence of a disability, a surviving child, or his or her representative, can make an application to the Department for a disability determination. This proposed regulatory action specifies the processes involved and incorporates by reference the three forms used in the disability determination: Applicant's Supplemental Statement of Facts for Medi-Cal, MC 223 (1/99); Authorization for Release of Information, MC 220 (4/03); and Appointment of Representative-Estate Recovery, DHS 6249 (9/04).
6. Establish timeframes for a child, or his or her representative, to request a disability determination and timeframes to return the completed forms and documentary proof to the Department. Establish when collection activities would be suspended and resumed during the notification and disability determination process.
7. Specify that the California Department of Social Services will make the disability determination on behalf of the Department when the surviving child's income does not exceed the Substantial Gainful Activity limit and describe notification procedures.

8. Specify the circumstances when a claim exemption will not apply.
9. Make non-substantive changes to achieve language that is consistent, of parallel construction, and provide clarifying references.
10. Remove the provisions that specify that the Department would value life estates and claims against such interests when there is an irrevocable transfer of the remainder interest.
11. Clarify the value of the Department's claim for revocable transfers of the remainder interest in property, when an irrevocable or revocable life estate is granted.

AUTHORITY

Sections 10725, 14124.5, Welfare and Institutions Code.

REFERENCE

Sections 421, 1382(c) and 1396p(b), 42 USC; Section 14009.5, Welfare and Institutions Code; *Belshé v. Hope* (1995) 33 Cal. App. 4th 161; *Dalzin v. Belshé* (N.D. Cal. 1997) 993 F. Supp. 732; *California Advocates for Nursing Home Reform v. Bontá* (2003) 106 Cal. App. 4th 498; Sections 215, 1215, 9202 and 19202, Probate Code; and California Constitution, Article 15, Section 1.

COMMENTS

Any written comments pertaining to these regulations, regardless of the method of transmittal, must be received by the Office of Regulations by 5 p.m. on August 4, 2006, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 1-800-735-2929, if you have a TDD; or 1-800-735-2922, if you do not have a TDD. Written comments may be submitted as follows:

1. By mail or hand-delivered to the Office of Regulations, Department of Health Services, MS 0015, 1501 Capitol Avenue, P.O. Box 997413, Sacramento, CA 95899-7413. It is requested but not required that written comments sent by mail or hand-delivered be submitted in triplicate; or
2. By fax transmission: (916) 440-7714; or

3. By email to regulation@dhs.ca.gov (it is requested that email transmissions of comments, particularly those with attachments, contain the regulation package identifier "R-14-04" in the subject line to facilitate timely identification and review of the comment), or
4. By using the "Making Comments on DHS Regulations" link on the Department website at <http://www.applications.dhs.ca.gov/regulations/>.

All comments, including email or fax transmissions, should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes to the regulation text on which additional comments may be solicited.

INQUIRIES

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Joy Cheah of the Third Party Liability Branch at (916) 650-0564.

All other inquiries concerning the action described in this notice may be directed to Lynette Cordell of the Office of Regulations at (916) 650-6827, or to the designated backup contact person, Chuck Smith, at (916) 440-7695.

CONTACTS

In any inquiries or written comments, please identify the action by using the Department regulation package identifier, R-14-04.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address noted above, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file). In addition, a copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

Materials regarding the action described in this notice (including this public notice, the regulation text, and the initial statement of reasons) that are available via the Internet may be accessed at <http://www.applications.dhs.ca.gov/regulations/> and then clicking on the "Select DHS regulations" button.

In order to request a copy of this public notice, the regulation text, and the initial statement of reasons be mailed to you, please call (916) 440-7695 (or California Relay at 711/1-800-735-2929), or email regulation@dhs.ca.gov, or write to the Office of Regulations at the address noted above. Upon specific request, these documents will be made available in Braille, large print, and audiocassette or computer disk.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

FISCAL IMPACT ESTIMATE

- A. Fiscal Effect on Local Government: None
- B. Fiscal Effect on State Government: None
- C. Fiscal Effect on Federal Funding of State Programs: None
- D. All cost impacts, known to the Department at the time the notice of proposed action was submitted to the Office of Administrative Law, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- E. Other Nondiscretionary Cost or Savings Imposed on Local Agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Department has determined that the regulations would not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new businesses or the elimination of existing businesses within the State of California.

(3) The expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations would not affect small business because small businesses are not required to comply with or enforce the regulations, nor would any benefit or detriment be derived from enforcement.

The Department has determined that the regulations will have no impact on housing costs.

ADDITIONAL STATEMENTS AND COMMENTS

In accordance with Government Code Section 11346.5(a)(13) the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Other regulation changes may be scheduled for hearing at the same time appointed for public hearing on the action described in this notice. An agenda for the public hearing will be posted at the time and place of hearing designated above.

For individuals with disabilities, the Department will provide assistive services such as sign-language interpretation, real-time captioning, note takers, reading or writing assistance, and conversion of public hearing materials into Braille, large print, audiocassette, or computer disk. To request such services or copies in an alternate format, please call or write: Linda Tutor, Office of Regulations, MS 0015, P.O. Box 997413, Sacramento, CA 95899-7413, voice (916) 440-7697 and/or California Relay 711/1-800-735-2929. Note: The range of assistive services available may be limited if requests are received less than ten business days prior to a public hearing.

GENERAL PUBLIC INTEREST

CALIFORNIA FISH AND GAME COMMISSION

NOTICE OF RECEIPT OF PETITION

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 2073.3 of the Fish and Game Code, the California Fish and Game Commission, on May 26, 2006, received a petition from the Endangered Species Recovery Council to delist the California

Brown Pelican (*Pelecanus occidentalis californicus*) from the Endangered Species List. Habitat types for this species are primarily warm coastal marine and estuarine environments year-round.

Pursuant to Section 2073 of the Fish and Game Code, on June 5, 2006, the Commission transmitted the petition to the Department of Fish and Game for review pursuant to Section 2073.5 of said code. The Department's evaluation and recommendation relating to the petition will be received by the Commission at its October 5, 2006, meeting in San Diego. Interested parties may contact Mr. Doug Updike, Acting Chief, Wildlife Programs Branch, Department of Fish and Game, 1812 Ninth Street, Sacramento, CA 95814, or telephone (916) 445-3406 for information on the petition or to submit information to the Department relating to the petitioned species.

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

BOARD OF EDUCATION

Rural Flexibility — No Child Left Behind Teacher Requirements

Under the federal No Child Left Behind (NCLB) Act, all teachers of core academic subjects must achieve certification as a highly qualified teacher, defined under the Act, no later than the end of the 2005-06 school year. Flexibility in this requirement has been offered by the U.S. Department of Education for single subject credentialed teachers in small rural schools that qualify under the Small Rural School Achievement (SRSA) program established in U.S. Department of Education Non-Regulatory Guidance for the NCLB Title 11, Part A, Improving Teacher Quality State Grants (Revised, August 5, 2005).

State Board of Education proposes adoption of 5 CCR 6113 to implement these new timelines for middle and high school teachers employed by SRSA program schools to allow additional time for achieving NCLB highly qualified teacher certification. This action also includes several punctuation revisions to 5 CCR sections 6110 and 6112.

Title 5
California Code of Regulations
ADOPT: 6113 AMEND: 6110, 6112
Filed 06/05/06
Effective 06/05/06
Agency Contact: Debra Strain (916) 319-0641

BUREAU OF AUTOMOTIVE REPAIR Definitions; Customer

Bureau of Automotive Repair proposes this action as one without regulatory effect to amend 16 CCR 3303(j) by deleting the definition of "Customer." This word is now defined in Business and Professions Code sec. 9880.1 pursuant to AB 1079 (Stats. 2004, ch. 874), which provides a narrower, more qualified definition, supercedes and is inconsistent with the Section 3303(j) definition, and in which Bureau of Automotive Repair has no discretion in implementing. Minor editorial revisions are proposed to three other definitions in Section 3303 for clarity, and all subsections after Section 3303(j) will be re-numbered.

Title 16
California Code of Regulations
AMEND: 3303
Filed 06/05/06
Effective 06/05/06
Agency Contact: James Allen (916) 255-4300

CALIFORNIA ARCHITECTS BOARD Issuance of Citations/Assessment of Administrative Fines

This rulemaking concerns the assessment of administrative fines and the issuance of citations against those licensed pursuant to the Landscape Architects Practice Act and those unlicensed individuals acting within its jurisdiction. This regulatory action changes the criteria for certain types of violations and the amount of the fines assessed for the different Class violations in response to the amendment of Business & Professions Code Section 125.9.

Title 16
California Code of Regulations
AMEND: 2630, 2630.1
Filed 06/05/06
Effective 07/05/06
Agency Contact:
Mary Ann Aguayo (916) 575-7230

CALIFORNIA ARCHITECTS BOARD Complaint Information System

This rulemaking revises 16 CCR §2608, Complaint Information System to be consistent with the Department of Consumer Affairs' model complaint disclosure

policy. This section applies to landscape architects and establishes conditions of disclosure to the public of complaint and disciplinary or enforcement actions. The regulation applies to licensed and unlicensed individuals under the Board's jurisdiction. The regulation lists the types of information to be disclosed as well as information not to be disclosed. The time limits for responding and how the information will be provided to the public is also detailed.

Title 16
California Code of Regulations
ADOPT: 2608
Filed 06/05/06
Effective 07/05/06
Agency Contact:
Mary Ann Aguayo (916) 575-7230

CALIFORNIA ARCHITECTS BOARD Public Information Disclosure

In this regulatory action, the California Architects Board adopts a regulation setting forth the Board's rules pertaining to providing the public with information regarding the Board's past and current licensees and regarding complaints and disciplinary and enforcement actions against licensed architects and unlicensed persons subject to the Board's jurisdiction.

Title 16
California Code of Regulations
ADOPT: 137
Filed 06/01/06
Effective 07/01/06
Agency Contact: Hattie Johnson (916) 575-7203

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY Capital Access Program for Small Businesses

This is a certificate of compliance for a rulemaking that amended six regulations to clarify various items that have occurred during actual loan transactions. The changes clarify that fees to be paid by a borrower in to the lender's loss reserve account can be rolled into the total amount of the loan. They also clarify that lender's are only entitled to seek reimbursement for the portion of the loan that is actually enrolled in the CalCap program. Another addition through these changes is the addition of cross-references to many existing federal and state laws outside of the CalCap program that impose restrictions on insider transactions by lenders. This was added to provide guidance and clarification to lenders in the CalCap program. The final substantive change was to re-work language indicating when a lender may be removed from the program by the Executive Director. The new language increases the actions that can lead to removal. All other changes were minor

grammatical corrections. There were no changes from the emergency text.

Title 4
California Code of Regulations
AMEND: 8070(d), 8071(a)(9), 8072, 8073(c), 8074(b), 8076(c)(1)
Filed 06/01/06
Effective 06/01/06
Agency Contact: Eugene Lee (916) 654-5740

CONTRACTORS STATE LICENSE BOARD Substantial Relationship, Rehabilitation, and Reapplication Criteria

This regulation package overhauls the criteria used to determine whether an applicant or suspended licensee is rehabilitated from the conviction of a crime or the commission of other “acts” that likely impair the ability of the individual to be a good contractor. CSLB applies the time frames of Penal Code section 4852.03 to its definition of rehabilitation and its determination of when an applicant who has been denied a license may reapply for a license.

Title 16
California Code of Regulations
ADOPT: 869.9 AMEND: 868, 869
Filed 05/31/06
Effective 06/30/06
Agency Contact: Betsy Figueria (916) 255-3369

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

Narcotic Treatment Program License Fees

This regulatory action increases the license fees for Narcotic Treatment Programs and provides for the administrative review of licensing actions.

Title 9
California Code of Regulations
ADOPT: 10056, 10057
Filed 06/07/06
Effective 06/07/06
Agency Contact: Mary Conway (916) 327-4742

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Visiting Restrictions with Minors

In this Certificate of Compliance filing, the Department of Corrections and Rehabilitation amends a regulation pertaining to “Visiting Restrictions with Minors” to specify when inmate “contact visitation” and “non-contact visitation” with minors will be permitted in relation to inmates convicted (or arrested, but not convicted) of specified crimes.

Title 15
California Code of Regulations
AMEND: 3173.1
Filed 06/06/06
Effective 06/06/06
Agency Contact: Stephanie Winn (916) 358-2460

DEPARTMENT OF INSURANCE Insurer Claims Settlement Practices

Department of Insurance proposes amendments to the Fair Claims Settlement Practices Regulations (10 CCR 2695.1 et. seq.), which implement restrictions on insurer unfair claims settlement practices defined in Insurance Code sec. 790.03(h) and related sections.

Title 10
California Code of Regulations
ADOPT: 2695.1(g), 2695.14 AMEND: 2695.1, 2695.2, 2695.7, 2695.8, 2695.9, 2695.10, 2695.12
Filed 06/01/06
Effective 07/01/06
Agency Contact: Risa Salat-Kolm (415) 538-4127

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Authorized Treatment of Electronic Hazardous Wastes

This is a readopt of three prior emergency regulatory actions dealing with the authorized treatment of universal waste electronic devices and notification requirements for manufacturers of covered electronic devices under the Electronic Waste Recycling Act of 2003: OAL file nos. 04-0526-01E, 04-1216-03E, and 05-0401-21E. This action is a statutory emergency under the provisions of Health and Safety Code section 25214.10.2.

Title 22
California Code of Regulations
ADOPT: 66260.201 AMEND: 66260.10, 66261.9, 66273.1, 66273.3, 66273.6, 66273.8, 66273.9, 66273.12, 66273.13, 66273.14, 66273.20, 66273.32, 66273.33, 66273.34, 66273.40, 66273.51, 66273.53, 66273.56, 66273.82, 66273.83, 66273.90, Appendix X to Chapter 11
Filed 06/05/06
Effective 06/05/06
Agency Contact: Mark Abrams (916) 322-2833

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD GISO Section 5155

This action amends existing provisions establishing minimum requirements for controlling employee exposure to airborne contaminants by updating the Permissible Exposure Limits (PELs) for approximately 20 chemicals listed on the airborne contaminants table.

Title 8
California Code of Regulations
AMEND: 5155
Filed 06/06/06
Effective 07/06/06
Agency Contact: Marley Hart (916) 274-5721

OFFICE OF REAL ESTATE APPRAISERS

Minimum Qualifications for Appraiser Licenses

Modifies the schedule by which applicants for a real estate appraiser license must demonstrate attainment of education, experience, and examination requirements.

Title 10
California Code of Regulations
AMEND: 3528
Filed 06/05/06
Effective 06/05/06
Agency Contact:
Anthony F. Majewski (916) 440-7878

OFFICE OF SPILL PREVENTION AND RESPONSE
Certificates of Financial Responsibility

This action without regulatory effect changes the routing number for incoming wire transfer transactions on the Nontank Vessel Application.

Title 14
California Code of Regulations
AMEND: 791.7, Form FG OSPR-1972
Filed 06/05/06
Effective 07/05/06
Agency Contact:
Joy D. Lavin-Jones (916) 327-0910

**CCR CHANGES FILED
WITH THE SECRETARY OF STATE
WITHIN JANUARY 04, 2006 TO
JUNE 07, 2006**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

03/28/06 AMEND: 1395
03/27/06 ADOPT: 250, 260, 270, 280 AMEND: 55

Title 2

05/26/06 ADOPT: 18438.5 AMEND: 18438.8

05/25/06 AMEND: 18942
05/24/06 ADOPT: Div. 8, Ch. 111, Sec. 59560
05/24/06 AMEND: 433.1
05/17/06 ADOPT: 22610.1, 22610.2, 22610.3, 22610.4
05/15/06 AMEND: 1859.2, 1859.40, 1859.51, 1859.70, 1859.93.1, 1859.95, 1859.147, Form SAB 50-04
05/08/06 AMEND: 18537.1
04/24/06 AMEND: 20108.70, Division 7
04/10/06 ADOPT: 20108, 20108.1, 20108.12, 20108.15, 20108.18, 20108.20, 20108.25, 20108.30, 20108.35, 20108.36, 20108.37, 20108.38, 20108.40, 20108.45, 20108.50, 20108.51, 20108.55, 20108.60, 20108.65, 20108.70, 20108.75, 20108.80
04/04/06 ADOPT: 18215.1 AMEND: 18225.4, 18428
03/14/06 ADOPT: 1859.70.3, 1859.71.5, 1859.78.9, 1859.93.2, 1859.93.3 AMEND: 1859.2, 1859.61, 1859.74, 1859.77.1, 1859.79, 1859.79.2, 1859.83, 1859.104, 1859.202, 1859.66
03/08/06 AMEND: 56, 56.1, 56.2, 56.3, 56.4, 56.5, 56.6, 56.7, 56.8
02/28/06 AMEND: 57.1, 57.2, 57.3, 57.4
02/21/06 AMEND: 2320(a) (2)
02/21/06 ADOPT: 18371
02/21/06 REPEAL: 2550, 2551, 2552, 2553, 2554, 2555, 2556
02/21/06 ADOPT: 18361.10
02/16/06 AMEND: Div. 8, Ch. 58, Sec. 54700
01/30/06 AMEND: Div. 8, Ch. 103, Sec. 59150
01/24/06 REPEAL: 649.23, 649.25, 649.26, 649.27
01/23/06 AMEND: 18351
01/20/06 AMEND: 1897
01/17/06 ADOPT: 560 REPEAL: 560
01/17/06 AMEND: Div. 8, Ch. 64, Sec. 55300

Title 3

05/23/06 ADOPT: 6580, 6582, 6584
05/23/06 ADOPT: 3424
05/19/06 AMEND: 3433(b)
05/18/06 ADOPT: 1472.7.2 AMEND: 1472, 1472.4
05/18/06 AMEND: 3591.12(a)
05/11/06 AMEND: 3591.19
04/28/06 AMEND: 1380.19, 1420.10
04/27/06 AMEND: 3406(b)
04/13/06 AMEND: 1446.4, 1454.10, 1462.10
04/11/06 AMEND: 3700(c)

04/11/06 AMEND: 3700(c)
 04/10/06 AMEND: 3406(b)
 03/30/06 AMEND: 3406(b)
 03/28/06 AMEND: 3406(b)
 03/23/06 ADOPT: 6310 AMEND: 6170
 03/07/06 AMEND: 3700(c)
 03/01/06 AMEND: 3406(b)
 02/22/06 AMEND: 3406(b)
 02/21/06 AMEND: 3433(b)
 02/21/06 AMEND: 3700(c)
 02/21/06 ADOPT: 3591.19(a)(b)(c) AMEND:
 3591.19(a)
 02/16/06 ADOPT: 3433
 02/07/06 AMEND: 6502
 02/02/06 AMEND: 3700(c)
 01/12/06 AMEND: 6393, 6394, 6395, 6396

Title 4

06/01/06 AMEND: 8070(d), 8071(a)(9), 8072,
 8073(c), 8074(b), 8076(c)(1)
 05/18/06 ADOPT: 12358
 05/05/06 AMEND: 150
 03/24/06 ADOPT: 10175, 10176, 10177, 10178,
 10179, 10180, 10181, 10182, 10183,
 10184, 10185, 10186, 10187, 10188,
 10189, 10190, 10191
 03/23/06 ADOPT: 10302(bb), 10305(d), 10305(e),
 10315(d), 10315(j), 10320(b), 10322(e),
 10325(c), 10325(c)(3)(K), 10325(c)(6),
 10325(c)(8), 10325(c)(12), 10325(f)(7),
 10325(f)(10), 10325(g)(5)(B)(ii),
 10325(g)(5)(B)(iv), 10325(g)(5)(B)(v),
 10326(g)(6), 1036(g)(7)
 02/28/06 AMEND: 4143
 01/25/06 ADOPT: 12002, 12004, Appendix A
 AMEND: 12100, 12200, 12220, 12300
 01/20/06 ADOPT: 1843.6
 01/09/06 ADOPT: 1902.5
 01/09/06 ADOPT: 1690.1

Title 5

06/05/06 ADOPT: 6113 AMEND: 6110, 6112
 05/25/06 AMEND: 1074
 05/15/06 ADOPT: 11987, 11987.1, 11987.2,
 11987.3, 11987.4, 11987.5, 11987.6,
 11987.7
 05/12/06 AMEND: 19819, 19851
 04/28/06 AMEND: 51026, 53206, 54024, 54100,
 54616, 54700, 54706, 55005, 55160,
 55300, 55316, 55316.5, 55320, 55321,
 55322, 55340, 55350, 55401, 55403,
 55404, 55512, 55522, 55530, 55605,
 55675, 55753.5, 55753.7, 56000, 56050,
 56062, 56200, 56201, 56202, 56204
 04/04/06 AMEND: 11704

04/04/06 AMEND: 42920
 03/16/06 ADOPT: 1207.1, 1207.2 AMEND:
 1204.5
 03/16/06 ADOPT: 15566, 15567, 15568, 15569
 03/15/06 AMEND: 51000, 51022, 51023, 51100,
 51102, 53407, 53410.1, 53413, 53501,
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2006 RULEMAKING CALENDAR

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